(6)

No. 93-2071

In The
Supreme Court of the United States
October Term, 1993

PINELLAS COUNTY, FLORIDA,

Petitioner,

v.

CH2M HILL SOUTHEAST, INC.,

Respondent.

On Petition For A Writ Of Certiorari To The District Court Of Appeal, Second District, State of Florida

PETITIONER'S REPLY TO BRIEF IN OPPOSITION

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PETITIONER'S REPLY TO BRIEF IN OPPOSITION

INTRODUCTION

Petitioner Pinellas County (Pinellas) files this Reply to Respondent's Brief in Opposition to the Petition for a Writ of Certiorari to review the judgment of the District Court of Appeal, Second District, State of Florida, entered on February 2, 1994 and the Order by the same court denying Pinellas' Motion for Rehearing and Rehearing En Banc entered on March 24, 1994. The opinions have been reprinted in a separate appendix to the Petition filed with this Court on June 21, 1994. (A: A, C) The same symbols referenced in the previous briefs will be referenced in this Reply.

REPLY

The Respondent, CH2M HILL SOUTHEAST, INC. (Hill), makes general nebulous statements in its Brief in Opposition to the Petition. Hill provides no support for the statements contained in its Brief. Hill claims that all the breaches of contract listed in the Petition by Pinellas were raised in the Initial Appeal to the Second District Court of Appeal of Florida ("Hill One"). (A: G) Hill is relying on the low percentage of certiorari petitions this Court grants to precipitate further injustice.

An examination of Hill's entire Brief filed with the District Court in Hill One confirms that only limited issues were raised on appeal. Hill alleged in Hill One the following:

> -The trial judge was required as a matter of law to disqualify itself;
>
> -Hill has no tort liability to Pinellas County because: Hill committed no tort independent of its contractual duties; Hill had no statuatory duties to the County; and the County presented no proof of damages sufficient to support a tort recovery.
>
> -Hill is not liable for breach of contract because: Hill had no contractual duty to inspect the manufacture of pipe segments; and Hill could not be held to a contractual duty under Pinellas County's contract with the pipe manufacturer through merger of the two separate documents;
>
> -Hill did not breach its contract in relation to the pipe manufacturer's use of class IV wire in pipe segments; and Hill did not breach its contract in relation to pipeline pressure;
>
> -The trial court exceeded its authority in awarding the damages equal to the cost of replacing the entire pipeline with improved components.
> (H: 2; 29-90)

A review of the arguments contained in Hill's Initial Brief confirms that Hill never briefed the District Court on the numerous breaches of contract specifically addressed in the Complaint and the final judgment entered by the trial court, including, but not limited to:

-Hill breached its contract by approving use of 17-gauge steel instead of 16-gauge steel. The submittal should have been rejected on this basis. (R:4)

-Hill breached its contract for not inspecting the manufacturing plant on an average of four (4) times per month; (R:4)

-Hill breached its contract by not advising Pinellas to have full time or part time inspectors at the pipe manufacturing plant; (R:4)

-Hill breached its contract by improperly designing and placing into the pipes vacuum relief valves. As a result of the improper design and placement, the pipes were filled with putrid ground water, contaminating the water supply pipeline, which supplies water to the entire county. (R:4)

Hill's statement that all of Pinellas' well-pled breaches of contract were brought before the District Court is contradicted by Hill's own Brief filed in Hill One (H: G) This completely impeaches Hill's credibility. If such a statement were true, then there can be no doubt that this Court could line up all of the breaches set forth in the Petitioner's First Amended Complaint (A: M; 24-30), which have been listed by number on pages 5-9 of the Petition, with Hill's Brief filed with the District Court, and find each breach identified. For example, item 30 on page 7 of the Petition states "Hill breached the contract by failing to design the surge protection facilities properly which were provided, specifically, defective air and vac-

uum-valve assemblies. This same allegation is alleged in the First Amended Complaint. (A: M; 28) However, a thorough review of Hill's Brief evidences that nowhere has Hill addressed the breach of contract allegations relating to the defective air and vacuum-valve assemblies. (H: 2) Another example is found in item 19 on page 6 of the Petition, which states "Hill breached the contract by certifying completion of the project without receiving affidavits and certifications of compliance." This allegation is contained in the First Amended Complaint (A: M; 26), but is never addressed by Hill in its Brief. (H: 2)

Rule 9.210, Fla.R.App.P., which abolished assignment of errors, requires that counsel specify in the initial appellate brief the alleged errors committed. Hill identified in its Brief those particular items it was appealing. However, as evidenced by the examples set forth above, the Initial Apellate Brief filed by Hill did not request review of numerous well plead contract actions of Pinellas. If this Court agrees that these breaches were not presented to the District Court, then the appropriate relief is to summarily dispose of the opinion of the District Court. If the issues were not raised on appeal, then at the time of re-trial, those issues are still before the lower court. See Two M Development Corp. v. Mikos, 578 So. 2d 829 (Fla. 2d DCA 1991). See also, Sprague v. Ticonic National Bank, 307 U.S. 161, 168 (1939); and Gertz v. Robert Welch, Inc., 680 F. 2d 527, 533 (7th Cir. 1982), cert. den., 459 U.S. 1226 (1983).

Hill also alleges that Pinellas' Petition " . . presents no valid claim under the United States Constitution, as Hill Two decision is a fact-bound determination which is substantively grounded in state law concepts."(H 2) No case law is presented by Hill to support this position. Hill makes a statement and simply asks the Court to "go along with it." This style of legal reasoning continues throughout the entire Brief in Opposition. It is impermissible. If there did exist case law to support this position Hill would have surely cited it to this Court. Hill argues that the District Court's opinion is " . . fully supported by Florida's law of the case doctrine: a clearly delineated, independent state law ground that was presented

by the County and argued by both parties. (H 10) Again, Hill fails to cite any case law that supports this statement. The reason for that is because none exists. If it did, Hill would presumably want to share it with all of us.

Hill represents to this Court that "[t]he County's allegations of contract breach by Hill were contained in a one-sentence Count of the complaint which merely incorporated by reference the twenty-two, detailed tort allegations contained in another count of the Complaint. " (H 3) This is not an accurate description of Pinellas' breach of contract allegations contained in the Complaint. A review of the First Amended Complaint, (A M:30), evidences that the breach of contract allegations consisted of much more than a mere sentence. Hill fails to recognize that Pinellas incorporated by reference allegations contained in paragraphs one through fourteen, along with those allegations contained in the negligence count in paragraphs sixty-four through sixty-seven. These allegations were incorporated rather than reciting them for a second time, in order to lessen the burden upon the trial court and opposing parties. This is just one of the many "red herrings" raised by Hill in its Brief.

Hill also suggests that Pinellas acted inappropriately by preparing a proposed final judgment, which was ultimately entered by the trial court. (H 3-4) It is unknown to Pinellas why Hill believes that this is relevant to the constitutional issues raised in Pinellas' Petition. There is no reason for Hill to bring this frivolous argument to the Court's attention. Moreover, throughout the history of this action pending before the trial court, counsel on all sides have repeatedly been asked to submit findings of fact and conclusions of law on matters that came before the trial court. Submitting proposed orders and judgments is part of any attorney's responsibility as an officer of the Florida courts. See Rule 1.080(h)(1), Fla.R.Civ.P. Hill fails to inform the Court that it too prepared a proposed final judgment. This is just another "red herring" raised by Hill in its Response Brief.

Hill alleges several times throughout its Brief that Pinellas is seeking a review of the "Hill One" decision. Hill is obviously aware that it asked the District Court to address

this very issue pursuant to a Motion to Dismiss filed by Hill. (R: 2) The District Court denied Hill's Motion to Dismiss. (R: 3) The District Court allowed the parties to proceed to fully brief the issues raised by Pinellas and also held oral argument. Therefore, it is academic that the District Court did not consider these issues raised in Pinellas' appeal to be identical to those previously addressed by the District Court in Hill One.

Hill claims that Pinellas " . . appealed the trial court's partial final judgment to the Second District on the ground that the Second District's opinion in Hill One had improperly restricted the issues on re-trial. " (H 6) This is a completely inaccurate statement. Not until the trial court interpreted the mandate of the District Court on March 3, 1993, was Pinellas put on notice that it would not be allowed to proceed forward on any of its claims of multiple breaches of contract. (A: D) It was at this moment in time that the courthouse doors were slammed shut on Pinellas.

Pinellas has filed this Petition because the trial court and the District Court refused to acknowledge Pinellas' constitutional right to be heard on well-pled breach of contract allegations. Pinellas has been denied the right to bring well-pled breaches of contract actions against Hill, without ever having been given the opportunity to be heard. (A: A, C, D, F) The breaches raise factual issues that cannot be decided by the District Court. See, Prevatt v. Prevatt, 462 So. 2d 604 (Fla. 2d DCA 1985); Williams, M.D. v. Dolphin Reef, Ltd., 455 So. 2d 640 (Fla. 2d DCA 1984). Hill's argument that the District Court somehow summarily disposed of these issues without Hill appealing these breaches is without merit. Pinellas has been denied it's fundamental constitutional right to bring well-pled breach of contract allegations before a trier of fact.

Hill attempts to divert this Court's attention from the true issues at hand by erroneously asserting that the previous appeal addressed these very same issues. Hill is guilty of merging all the decisions together as being one in the same.

As a result, Hill is falsely simplifying the issues. Hill is hoping that it can survive this action unscathed if this Court does not look at the specific issues raised by Hill on appeal in the Hill One appeal (H: G;2) versus the numerous well-pled contract issues raised by Pinellas County.

Hill claims that the denial of rehearing from the District Court and the denial to grant discretionary review by the Florida Supreme Court evidences the lack of merit of Pinellas' arguments contained in this Petition. Hill fails to acknowledge that a denial of a motion for rehearing by the District Court is nothing more than the District Court's recognition that it's opinion in Hill One addressed all issues appealed. Malsby, et al v. Gamble, 54 So. 2d 766, 773 (Fla. 1911); Christy, et al v. Burch, et al., 6 So. 857 (Fla. 1889). The Florida Supreme Court declined to accept discretionary review because of jurisdictional reasons. It never reached the merits of the case. Rule 9.120., Fla.R.Civ.P. (R 1)

Hill wants to persuade this Court that the District Court addressed all of the well-pled breaches as a manufacturing oversight duty. (H 11) This is an obvious misrepresentation of the multiple contract allegations set forth in the First Amended Complaint. (A: M 2-30). Hill's reliance on the limited subject of the "manufacturing oversight duty, "and the District Court's ruling on this limited issue surely does not resolve all the other breach of contract allegations. (H 11) The manufacturing duty is only a minor portion of the duties Pinellas alleges that Hill owes under the terms of the Engineering Agreement. (A:H; 16-30) A review of the Engineering Agreement confirms that there are multiple duties that Hill was held responsible for under the terms of the Agreement. (A: H 16-30) The trial court's final judgment found Hill liable for the numerous breaches under the terms of the Engineering Agreement, which included those listed in the Petition. (R: 4)

Pinellas is urgently requesting this Court to reconsider the breach of contract allegations. Specifically, Pinellas is asking this Court to determine whether its fundamental consti-

tutional rights to be heard have been denied as to all of the other contract issues, excluding the "...duty to inspect the manufacturing of the pipe. " (H 11)

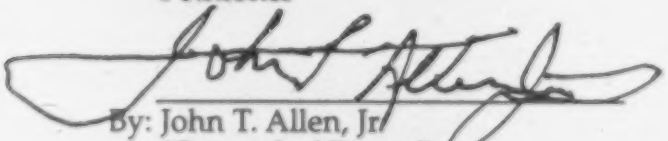
Not surprisingly, Hill makes light of the case law which Pinellas relies upon. Yet, absent from Hill's Response Brief is any case law which confirms that a court has the right to dispose of well-pled allegations without ever providing any opportunity to be heard. Hill "tap dances" around this very crucial issue by again simply making light of the decisions of this Court and other courts across this country cited in the Petition. Hill brushes over the substantive issues that have been raised in the reported opinions presented to this Court by the Petitioner. This is the approach that Hill has taken throughout its entire brief, failing to ever get to the meat of the issues presented in the petition.

Pinellas strongly urges that the District Court's opinion and the trial court's decision, disposing of breaches of contract allegations, without providing Pinellas an opportunity to be heard, is a violation of Pinellas' fundamental constitutional right of access to the courts and the right to be heard, as protected by the Fourteenth Amendment of the United States Constitution. The decisions cited in the petition clearly state that a civil litigant has a fundamental right to be provided a forum to be heard.

CONCLUSION

Hill's Brief in Opposition contains statements unsupportable by the record in the state court action. This is confirmed by Hill's failure to reference sufficient record citations. Hill makes very grandiose statements that simply are not compatible with the record produced in the state court proceedings. At the same time, Hill never addresses "head-on" the questions presented in the Petition. Hill never cites to this Court evidence that shows that even a reasonable number of breach of contract claims raised by Pinellas in its Complaint were addressed in the initial appeal before the District Court. For these reasons, Pinellas County requests that certiorari be granted and the appropriate order be given summarily disposing of the Second District Court of Appeal's Decision entered on February 2, 1994. (A: A)

Respectfully submitted,
PINELLAS COUNTY, FLORIDA
Petitioner



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September, 1994

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Appendix 1

Supreme Court Of Florida

Monday October 12, 1992

PINELLAS COUNTY, FLORIDA, CASE NO. 80,056

Petitioner,

v.

DISTRICT COURT OF APPEAL,
2ND DISTRICT NO. 90-02027
90-02028
90-03562
90-03563

CH2M HILL SOUTHEAST,
INC., ET AL.,

Respondents.

This cause having heretofore been submitted to the Court on jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Article V, Section 3(b), Florida Constitution (1980), and the Court having determined that it should decline to accept jurisdiction, it is ordered that the Petition for Review is denied.

No Motion for Rehearing will be entertained by the Court. See Fla. R. App. P. 9.330(d).

OVERTON, SHAW, GRIMES, KOGAN and HARDING, JJ., concur

BH

cc: Hon. William A. Haddad, Clerk
Hon. Karleen F. DeBlaker, Clerk
Hon. Fred L. Bryson, Judge
Alan C. Sundberg, Esquire
Sylvia H. Walbolt, Esquire
John T. Allen, Jr., Esquire
Michael J. Keane, Esquire
Jeffrey S. O'Brien, Esquire
Stephen M. Bull, Esquire
G. Lee Garrett, Jr., Esquire
Arthur J. England, Jr., Esquire
Linda Ann Wells, Esquire
William J. Roberts, Esauire
Joe Horn Mount, Esquire
Michael A. Skelton, Esquire
Joel S. Perwin, Esquire
Charles Auslander, Esquire
Maite Azcoitia, Esquire
John Copelan, Jr., Esquire
Herbert W. A. Thiele, Esquire
Julie E. Lovelace, Esquire
Joseph M. Mathews, Esquire

Appendix 2

IN THE DISTRICT COURT OF APPEAL
SECOND DISTRICT OF FLORIDA

PINELLAS COUNTY, FLORIDA,

Plaintiff/Appellant,

v. Case No. 93-01203

INTERFACE CORPORATION; CLEVEPAK CORPORATION; MADISON MANAGEMENT GROUP, INC., as successor of INTERPACE CORPORATION; and CH2M HILL SOUTHEAST, INC.,

Defendants/Appellees.

_____/

MOTION TO DISMISS APPEAL

CH2M HILL SOUTHEAST, INC. ("CH2M HILL"), by and through its undersigned attorneys and pursuant to Fla.R.App.P. 9.300, hereby moves this court for an order dismissing the appeal filed by Pinellas County, Florida ("Pinellas County").

On April 1, 1993, Pinellas County filed a notice of appeal directed to a final partial judgment entered in favor of CH2M HILL and an order denying Pinellas County's motion for rehearing with respect to the final partial judgment. (A. 1, 2)l This court is without jurisdiction to review the partial judgment because it is not a final order. Accordingly, the appeal should be dismissed.

I. Background

In the underlying action, Pinellas County sued CH2M HILL in tort and contract for CH2M HILL's allegedly-improper performance of engineering services with respect to the design and construction of a water transmission main in Pinellas County. (A. 44-53) CH2M HILL successfully appealed an adverse judgment to this court; this court's opinion is found in CH2M Hill Southeast, Inc. v. Pinellas County, Florida, 598 So. 2d 85 (Fla. 2d DCA 1992). (A. 3) After this court rendered its opinion in CH2M HILL, Pinellas County unsuccessfully requested this court to rehear and clarify this opinion (A. 8-20, 21) and then unsuccessfully requested the Florida Supreme Court to invoke its discretionary jurisdiction to review the CH2M HILL opinion. (A. 22-41, 42) This court issued its mandate on June 8, 1992. (A. 43)

In the CH2M HILL opinion, this court held that "...Hill is entitled to judgment as a matter of law on all issues save one, and the new trial as to Hill shall be limited to the one issue dealt with below." 598 So. 2d at 88. That issue was Pinellas County's assertion that Hill had breached its contractual design responsibilities by allowing the pipe manufacturer to use class IV wire for the pipeline. 598 So. 2d at 89.

In its mandate, this court instructed the trial court as follows:

> You are hereby commanded that further proceedings be had in [this] cause in accordance with the opinion of this court and with the rules of procedure and laws of the State of Florida.

1 All references to the record will be referred to as (A.) followed by the appropriate citation to the page number of the appendix.

(A. 43) On March 3, the trial court entered its final partial judgment in favor of CH2M HILL in accordance with the CH2M HILL opinion and this court's mandate. It is that partial judgment, and the court's order denying rehearing of that judgment, which are the subject of this appeal.

II. The partial judgment and order denying rehearing are not final orders.

A final order is generally defined as an order which brings an end to the judicial labor in the cause and terminates the cause as between the parties. Pruitt v. Brock, 437 So. 2d 768 (Fla. 1st DCA 1983). The present case remains pending between Pinellas County and CH2M HILL at the trial level and judicial labor has not come to an end. Because of this, the partial judgment is not a final order. In addition, the partial judgment does not fit within any of the exceptions to the general definition of a final order. The partial judgment in question does not dispose of a separate and distinct cause of action which is not interrelated with the remaining portion of the case pending in the trial court. Mendez v. West Flagler Family Association, Inc., 303 So. 2d 1 (Fla. 1974); S.L.T. Warehouse Co. v. Webb, 304 So. 2d 97 (Fla. 1974).

In Szewczyk v. Basshore Properties, 456 So. 2d 1294, 1296 (Fla. 2d DCA 1984), this court examined the following three criteria in determining whether a partial judgment was final and appealable:

1. Could the causes of action dismissed be maintained independently of each other?

2. Were one or more parties removed from the action when the partial judgment was entered?

3. Are the counts separately disposed of based on the same or different facts?

See also McClain Construction Corp. v. Roberts, 351 So. 2d

399 (Fla. 2d DCA 1977). Under these tests, the partial judgment and order denying rehearing are not final orders.

The partial judgment in favor of CH2M HILL implements this court's decision to rule adversely to Pinellas County on all claims asserted by Pinellas County except the single issue remanded to the trial court for re-trial. The issue remanded for retrial was Pinellas County's allegation that CH2M HILL breached its contractual design responsibilities by allowing the pipe manufacturer to use class IV wire for the pipeline.

This allegation is set forth in Count X of Pinellas County's First Amended Complaint (the contract count) at paragraphs 69 and 70. These paragraphs incorporate paragraph 66 from Count IX (the negligence count, which this court disposed of in the CH2M HILL opinion), and all of its subparts by reference. (A. 44-53)

Counting paragraph 66, Count X contains 20 paragraphs setting forth numerous theories as to how CH2M HILL allegedly breached its contract with Pinellas County. The trial court's partial judgment does not dispose of Count X in its entirety but, rather, disposes of all but one of Pinellas County's theories of how CH2M HILL breached its contract. The breach of contract count survives the partial judgment; it merely survives in a more limited scope.

All three of the Szewczyk criteria and the Pruitt test suggest that the partial judgment is not "final." First, the partial judgment did not "dismiss" any cause of action; it merely limits the scope of the breach of contract cause of action that remains. Second, no parties were removed from the action when the partial judgment was entered. Third, the partial judgment did not separately dispose of any count what soever, much less one that was based on "different facts." As described above, the partial judgment simply narrowed the breadth of the breach of contract count that survived the first appeal of this action.

With reference to Pruitt, the partial judgment did not bring an end to the judicial labor; it simply reduced the scope of the court's labor. Further, the partial judgment certainly did not terminate Pinellas County's contract cause of action, and is thus not a final order under Pruitt.

III. Because the partial judgment and order denying rehearing are not "final orders," this court does not have jurisdiction.

Because the partial judgment does not dispose of a separate and distinct cause of action which is not interrelated with the remaining portions of the case, this court lacks jurisdiction at this time to review the partial judgment. Mendez, supra. This court has repeatedly dismissed similar appeals from non-final orders. See, e.g., Department of Corrections v. Ratliff, 552 So. 2d 302 (Fla. 2d DCA 1989); Taddie Underground Utility Company Inc. v. Sloan Pump Company, Inc., 497 So. 2d 701 (Fla. 2d DCA 1986).

In sum, this court lacks jurisdiction to review the partial judgment because that judgment does not completely dispose of the case with respect to either CH2M HILL or Pinellas County and does not involve the complete dismissal of a count. Rather, the partial judgment disposes of portions of a count whose facts are interrelated to the remaining cause of action. Accordingly, under clear precedent from the Florida Supreme Court and the Second District, appellate jurisdiction is not present. See also Levine v. Forrest, 578 So. 2d 458 (Fla. 3rd DCA 1991); Boca Grande Property Owners Association, Inc. v. Boca Development Associates., Inc., 570 So. 2d 1091 (Fla. 4th DCA 1990); Mimms v. Cassidy, 550 So. 2d 162 (Fla. 1st DCA 1989); Clermont Builders Supply, Inc. v. General Construction and Design, Inc., 423 So. 2d 518 (Fla. 5th DCA 1982).

WHEREFORE, CH2M HILL respectfully requests that this court enter an order dismissing Pinellas County's appeal for lack of jurisdiction and granting such further and additional relief as this court deems appropriate.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail to Michael J. Keane, Esquire, Baynard, Harrell, Mascara, Ostow & Ulrich, P.A., P.O. Box 180, 100 Second Avenue South, #1202, St. Petersburg, FL 33731 and John T. Allen, Jr., Esquire, 4508 Central Avenue, St. Petersburg, FL 33711, this 16th day of April, 1993.

_____

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Appendix 3

IN THE SECOND DISTRICT COURT OF APPEAL,
LAKELAND, FLORIDA

MAY 21, 1993

PINELLAS COUNTY, FLORIDA,)

Appellant(s),

v. Case No. 93-01203

INTERFACE CORPORATION, et al.,

Appellee(s).

BY ORDER OF THE COURT:

It is ordered that the motion to dismiss filed by appellee CH2M Hill is hereby denied.

Appellant's request for judicial notice, motion to recognize record from prior appeal, to shorten time and to supplement record on appeal with appendix is hereby granted. Appellant shall submit the post mandate record through the clerk of circuit court.

I HEREBY CERTIFY THE FOREGOING IS A TRUE COPY OF THE ORIGINAL COURT ORDER.

WILLIAM A. HADDAD, CLERK

c: Michael J. Keane, Esq.
John T. Allen, Jr., Esq.
Benjamin H. Hill, III, Esq.
Karleen DeBlaker, Clerk

VIII.

ACTION OF PINELLAS COUNTY AGAINST CH2M Hill

A. FINDINGS OF FACT

Pinellas County sued CH2M Hill (also hereafter the "engineer") for breach of contract and negligence in violating the various duties assumed by CH2M Hill as specified in the contract between Pinellas County and CH2M Hill (hereafter CH2M Hill contract) of March 24 1975 834 and the contract between Interpace and Pinellas County hearafter Interpace contract) dated December 16, 1976.835 The Court has already ruled that both contracts had to be read together and that the duties assigned in both of the contracts to CH2M Hill were the legal obligations of the engineer.836 CH2M Hill drew both contracts and was said to draw the Interpace contract.837 CH2M Hill assumed certain duties and responsibilities and rights in the Interpace contract and now cannot be heard to object when Pinellas County complains that CH2M Hill failed in complying with its duties and obligations under the Interpace contract. From the testimony in evidence, both Pinellas County and Interpace properly assumed during the construction of the pipe that CH2M Hill had the authority and duties granted by itself to itself as engineer in the Interpace contract. If CH2M Hill was not performing such duties then this means that no one was performing the engineering duties necessary to protect the County from the construction of a defective pipeline.

As previously ruled, when both contracts and the national standard AWWA C301 are read together the duties assumed in the CH2M Hill contract are consistent with the duties assumed in the Interpace contract and are ones normally performed by the consulting engineer when operating under AWWA C301.838

The Court will construe the intent of the contract terms of both contracts in light of the surrounding circumstances and the application of the duties of an engineer under the national standard. If there are two possible constructions of the various clauses in these contracts the Court will construe the provision against the drafter of both agreements, CH2M Hill. 839

B. CH2M HILL'S OBLIGATION WAS TO MAKE SURE THAT INTERPACE CONSTRUCTED THE PIPE ACCORDING TO SPECIFICATIONS IN ORDER TO PROTECT PINELLAS COUNTY.

At the time CH2M Hill acted as Pinellas County's engineer it had been the only engineering firm serving the County for many years in the past. 840 CH2M Hill did all the work for the County. 841 The County did not possess the technical expertise to design, interpret tests, inspect pipe construction sites or do any of the actual engineering work necessary to protect the County against defective design or manufacture of prestressed concrete pipe. 842 In the preamble to the CH2M Hill contract the engineer represents that it has total expertise in environmental engineering which includes the design and construction of prestressed concrete pipe and pipelines. 843 The protective engineering services listed in the contracts were definitely intended to be assumed by CH2M Hill who was, under Item B(4) of the CH2M Hill contract, required to act as Pinellas County's representative and "judge the performance" of Interpace's compliance with the specifications.844 CH2M Hill had the authority to "issue all instructions" for the County to Interpace.845 The engineer could direct Interpace to stop work and "require special examination and testing of the work".846 CH2M Hill was to recommend final acceptance of "the construction work" at the end of the project847 as well as approve pay estimates as the work progressed. If it was not the intent of the parties that CH2M Hill was to protect the County from improper manufacturing of the pipe by Interpace then the charge to "judge the performances" under the contract documents which

included the plans and specifications or to recommend final acceptance, would not have been written into the contract.848 There is no other way CH2M Hill could have performed their agreed tasks without taking on the full responsibility of monitoring Interpace's manufacture of the prestressed pipe.

The pertinent provisions of Section B of CH2M Hill's contract provides:

> 1. An average of 4 visits per month to the construction site during construction to determine if the work is proceeding in accordance with the Contract Documents. By means of these visits the Consulting Engineers will endeavor to protect the Owner against defects and deficiencies in the work of the contractor. This shall not imply guarantee of the contractor's performance.
>
> 2. Check shop drawings and descriptive data submitted by the contractor as to general conformity to the plans and specifications.
>
> 3. Approval of pay estimates.
>
> 4. Consult and advise with the Owner act as the Owner's representative, issue all instructions of the Owner to the contractor, prepare routine change orders as required and act as interpreter of the terms and conditions of the Contract Documents and judge the performance thereunder. Whenever the Consulting Engineers consider it necessary or advisable to effect proper carrying out of the intent of the Contract Documents, they may, as the Owner's representative, direct the contractor to stop work or require special examination or testing of the work.
>
> **********
>
> 6. Following a final inspection with the Owner's rep-

resentative, representatives of any governmental agencies having jurisdiction, and representatives of the contractor, recommend as to final acceptance of the construction work.

The word "contractor" as used in the above provisions means "Interpace".849 The term "contractor" in Section 1.2.2 of AWWA C301-72 is defined as the corporation furnishing the pipe and fittings according to the standard. CH2M Hill denies that the engineers' duty was to make sure Interpace properly constructed the pipe;850 however, it freely admits that it actually did check the shop drawings submitted by Interpace under paragraph 2(B) of the CH2M Hill contract.851 Therefore, the word "contractor" as used in paragraph 2(B) - "check shop drawings and descriptive data submitted by the contractor" must mean Interpace852 in paragraph 2(A). It follows that the word "contractor" must mean Interpace in all other paragraphs of the agreement as well. This contract does not define the word "contractor" in any of its provisions. At best the provisions are ambiguous and legitimately capable of being construed two different ways and are, therefore, construed against CH2M Hill. This interpretation means that CH2M Hill's duties "during construction" were: to visit the Lacoochee plant an average of four times per month to determine if the manufacturer's "work" was proceeding in accordance with the specifications ("Contract Documents"); by means of these visits to the manufacturing plant "to protect the County against defects and deficiencies in the work" of Interpace;853 judge the performance of the work of Interpace under the specifications;854 recommend acceptance of Interpace construction work both during construction and upon final conlpletion.855 CH2M Hill denies these obligations856 because the pipe was obviously not constructed according to specifications and the County was not protected. CH2M Hill contends that when its contract was drawn the County had not determined to contract directly with a pipe manufacturer and other contractors and so, therefore, the work would have been done by a corporation who would have bought the pipe from the manu-

facturer and completely installed the pipe.857 Therefore, "contractor" did not mean the pipe manufacturer.858 Whether this is true or not CH2M Hill did not seek any amendment to its contract with the County before or after it drew the Interpace contract.859 It is, therefore, a finding of fact that both CH2M Hill ano the County intended CH2M Hill's engineering agreement to be read in the context of the contractual relationships and duties asuumed by the County, CH2M Hill, and Interpace when the Interpace contract was signed.860 If this were not the intention of CH2M Hill it would not have written into the Interpace contract engineering duties which are consistent with the word "contractor " being interpreter as Interpace in CH2M Hill's contract with the County.

Reading the two contracts together the obligations of CH2M Hill in the Interpace contract requires CH2M Hill to make sure that Interpace constructed the pipe according to specifications. In Interpace's contract the term "engineer" is defined as "CH2M Hill" (BC&E) - "acting for owner" Pinellas County.861 CH2M Hill is to approve "materials to be delivered" in the Interpace contract which states as follows:

C-01 AUTHORITY OF THE ENGINEER:

> A. The engineer will certify invoices for payment, approve or disapprove schedules, working drawings and shop drawings and approve or disapprove materials to be delivered.

The above provision requires CH2M Hill to approve the component parts and the manufacturing process and pipe "to be delivered" by Interpace.862 This provision is entirely consistent with CH2M Hill's being at the Interpace construction site at Lacoochee an average of four times per month acting as the Pinellas County's representative "to protect" Pinellas County "against defects and deficiencies in the work" of Interpace.863 Additionally, consistent with this interpreta-

tion is the provision in Interpace's contract for the engineer to "reject" - "defective material" - "when not in accordance with the plans and specifications" and require replacement.864 Section C-03 of the Interpace contract further provides:

> "**Failure to reject any defective materials shall not in any way prevent later rejection when such defect is discovered. Such failure shall not relieve the supplier of his obligations to fulfill his contract, even though such materials may have been previously inspected by the engineer and accepted or estimated for payment, nor shall it obligate the owner to final acceptances, or prevent the owner at any tine subsequent from recovering damaged materials shown to be defective".

If the engineer did not intend to assume the overseeing of Interpace in the construction of the pipe then the authority to reject the materials or the phrase "even though such materials have been previously inspected by the engineer and accepted or estimated for payment" would not have been written into Interpace's contract.865

In Section C-03(a-2) of the Interpace contract the engineer is even given the right to accept minor imperfect materials. Paragraph 6 on page C–3 (Rev.) of Interpace's contract provides for CH2M Hill to have the right to inspect at the manufacturing plant site and for the "engineer" (not the County) to conduct such "inspections and tests" as the engineer may require:

> 6. To permit a representative of the County and/or its engirleer, at all reasonable tines, to inspect the work and progress, or any of the materials used or to be used in connection therewith, and shall furnish promptly, without additional charge, all reasonable facilities, labor and materials deemed necessary by the

engineer, for the conducting of such inspections and tests as he may require.

The Court finds that all of the provisions when taken together are totally consistent with CH2M Hill's assuming the duty to make sure that Interpace constructed the pipe according to specifications and to protect the County and monitor the Lacoochee plant with full authority to approve materials, reject materials, accept minor defects, and conduct whatever tests were necessary to meet this obligator.866

C. CH2M HILL WAS RESPONSIBLE FOR INTERPRETING AND PASSING ON TESTS OF COMPONENT PARTS IN THE PIPE MANUFACTURING PROCESS

The engineer specified that Section 1.9 tests of AWWA C301 of concrete and steel be supplied to the engineer.867 On page 01010-3 of the Interpace contract all results of tests were to be supplied to the engineer. These tests are customarily supplied to the engineer prior to or during production so that the making of defective pipe may be stopped.868 In subsection (b) of C-03 of the Interpace contract, Interpace was to furnish tests satisfactory to CH2M Hill that "the materials and finished" pipe have passed the required tests prior to delivery:

> (b) INSPECTION AND TESTING OF MATERIALS: When not otherwise specifically provided in the specifications, the inspection and testing of materials and finished articles to be incorporated in the work shall be made by commercial bureaus, laboratories or agencies approved by the engineer, and the cost of such inspection and testing shall be paid by the supplier. The supplier shall furnish evidence satisfactory to the engineer that the materials and finished articles have passed the required tests prior to delivery, and shall promptly

remove from the delivery site any rejected materials or articles. (Emphasis supplied.)

In Section 1.9.6 of AWWA C301-72 the expense of the tests are to be borne by the manufacturer consistent with almost the identical language as is contained in subsection (b) of Section C-03 of the Interpace contract quoted above. Both contracts have the specific provision that the engineer CH2M Hill is acting for Pinellas County.869

CH2M Hill contends it did not have the responsibility of reviewing the tests of concrete and wire prior to Interpace's production of the pipe870 for the obvious reason that although the tests were required to be submitted prior to production no such tests were submitted or reviewed.871 The wire and concrete were permitted to be used with no check or balance or protection of the County.872 CH2M Hill's position must be rejected. The provisions in the CH2M Hill contract alone impose this obligation. Through the visits to the plant CH2M Hill was to protect against defects and deficiencies in the pipe. Without tests of the concrete or mortar mix or wire mill tests (since the wire was not made at Lacoochee but Solon) no protection could have been afforded the County.873 CH2M Hill had to review these types of tests to do its job.

In Item A(1) of the CH2M Hill contract, CH2M Hill agreed to "consult" on "laboratory tests and inspection of samples or materials" and "act as the Owner's representative in connection with any such services". The Court must ask the rhetorical question - what "laboratory tests and inspection of samples or materials" is the contract describing if not those of the pipe manufacturer?

CH2M Hill contends that paragraph A(1) of the CH2M Hill contract simply means advise as to the necessity of such tests.874 The Defendant overlooks the inclusion of the word "and" which means "also", in the phrase "provide consultation and advice as to the necessity of providing", etc. CH2M Hill was to "consult" as well as "advise". Even

without the provision the intent to have the engineer pass upon the pipe manufacturer's tests is obvious from the other contract provisions.875

D. THE DUTY TO DESIGN THE PIPELINE, CHECK SHOP DRAWINGS, AND PROVIDE SPECIFICATIONS

CH2M Hill's does not contest the fact that CH2M Hill was to prepare a complete basis for design876 of the pipeline. They do not contest that it was CH2M Hill's responsibility to approve Interpace's submittal sheet877 which included Interpace's specifications as to what materials it intended to use in pipe production, including Class IV wire, in the manufacture of the pipe and the individual pipe design formulas for each of the various pipes (54" and 60") to be delivered to construct the pipeline. There is some semantic dispute as to whether or not the submittal sheet and its standards and formulas was to be "approved" or "reviewed" for compliance with the specifications.878 Section 3-01of the Interpace contracts provides that the engineer will "approve" shop drawings. The Court finds that the duty of CH2M Hill under both contracts was to approve the shop drawings, specification sheet submitted by Interpace to the engineers, and the pipe design formulas.879 In fact, Mr. Henderson, an engineer for CH2M Hill, who wrote "reviewed" on the front of the submittal sheet concedes that he at least, in part, reviewed the design formulas and numbers supplied by Interpace on the submittal sheet.880

Pinellas County has charged CH2M Hill with breach of contract and negligence in improperly reviewing the submittal sheet, shop drawings and design formulas and approving them. At issue is the approval of Class IV wire, use of 17-gauge steel instead of 16-gauge steel, approval of the initial and resulting mudular ratios and creep factor, and failure to check prior Interpace jobs using Class IV wire from the Experience List submitted by Interpace. The Court will determine whether such breaches occurred or the engineers fell

below the standard of care as to each of these items.

CH2M Hill admits to the duty of being required to draw the specifications.881 Pinellas County claims breach of contract and negligence in not providing a "complete" basis for design in CH2M Hill's failure to specify, as one of the elective tests to be supplied by the manufacturer, the reports specified in Section 2.4 of AWWA C301-72 which if specified would have required submittal by Interpace of samples of fine and coarse aggregate.882 CH2M Hill is also charged with breach of contract and negligence in not inquiring or determining in advance whether admixtures were being used.883 See Section 2.6 of AWWA C301-72.

There is some dispute as to whether or not CH2M Hill was to determine before drawing the specifications whether the pipe should be epoxy or cold tar coated. No cold tar epoxy coating was specified by CH2M Hill.884 Therefore, if the pipe is determined to have required coating this element of damage will be the sole responsibility of the engineer. The Court finds that preparation of a complete basis of design required the engineer to determine whether or not the pipeline should be cold tar epoxyed.885 It will be up to the Court to determine whether such breach occurred or the engineer fell below the standard of care in not specifying that the pipeline be coated.

E. CH2M HILL BREACHED ITS CONTRACTUAL OBLIGATIONS TO PROTECT PINELLAS COUNTY FROM THE MANUFACTURE OF A DEFECTIVE PIPELINE

Since BC&E had in the past exclusively served as Pinellas County's engineer it was actually aware of the strategic importance of the 60" and 54" pipeline as was Pinellas County.886 The engineers who worked on the project acknowledged this fact in their testimony.887 The theme of the whole contractual arrangement was "to protect the Count ".888 The Water Director of Pinellas County at the time the project was initiated stated that CH2M Hill engineers were

very aware of the importance of the pipeline and the engineers were to do whatever it took "to protect the County".889 It is obvious that drafting proper specifications, selection of the proper pipeline route, preparing a complete basis for design, and determining whether the pipe was to be coated were all directed towards CH2M Hill's acting as Pinellas County's "representative" to oversee the pipeline construction and approve pay estimates as the project progressed and certify to the County at the end of construction that Interpace had performed its contract and had manufactured the pipe according to BC&E's drawn specifications. The principle way that the engineers would perform these duties was to carefully check the shop drawing submittals and design calculations submitted by Interpace,891 and observe pipe production and check the tests the engineers had specified the manufacturer was to give CH2M Hill for review and approval.892 Interpace was to "furnish evidence satisfactory to the engineer that materials and finished articles had passed the required tests prior to delivery". See Section 3-03(b) of Interpace Contract.

CH2M Hill was paid substantial sums for this service of 4.5% of the estimated construction costs or $292,211.16, plus an additional $72,728.11 of estimated construction costs, or a total of $364,939.27.893

The CH2M Hill engineer who designed the pipeline was Mr."Dink" Henderson.894 The head of the engineering services was theCH2M Hill project director, Mr. Jack Suddath.895 The Court has observed both witnesses called as adverse witnesses and judged their testimony and demeanor as a whole. Their actions in performing their contractual duties were at best superficial. They relied upon Interpace and its reputation to build proper pipe896 and breached CH2M Hill's contract obligation to, in good-faith, act as the County's representative to check on Interpace and make sure it was living up to its reputation.897 CH2M Hill represented that it had expert personnel who would do the engineering and monitoring.898 The Court finds the engineer who did the

pipeline design to be unqualified.899 The project engineer was also unqualified9 and admits to not being an expert in prestressed concrete pipe.901 The project manager signed and sealed the plans and specifications which makes him responsible for the entire engineering work in a field in which he had no specific personal expertise in violation of Section 471.025, Fla.Stat.902. Therefore, CH2M Hill materially breached its contract in not providing competent engineers in the specialty required to perform the necessary engineering functions involving a prestressed concrete pipeline.

The engineers overall failure to protect the County is directly responsible for 13 1/2 miles of defective pipeline being placed with public money into the heart of the Pinellas County water system. Had CH2M Hill done its job the defective pipeline would not have been manufactured and put into service.903 There are many specific charges of breach of contractual duties by Pinellas County against CH2M Hill which will be addressed by the Court.

(1) CH2M HILL BREACHED ITS CONTRACT IN FAILING TO SPECIFY THAT THE PIPELINE BE COLD TAR EPOXY COATED

It is the duty of a design engineer when designing a pipeline to determine if the pipeline should be coated.904 The pipeline was not required by specifications to be cold tar epoxy coated.905

The CH2M Hill design engineer who made the determination, based upon his stated qualifications, his demeanor, and his responses to questions on this subject and pipeline design in general, did not possess the proper expertise to make the decision as to whether to coat the pipe or not.906 He asked Price Brothers, a competitor of Interpace, whether to coat the pipe and they advised against coating.907 The engineer appears to have blindly followed Price Brothers' advice.

There is a conflict in the evidence and expert opinions

as to whether the pipeline should be coated.908 As trier of the fact, the Court chooses to believe the engineering opinion that the pipe should have been specified by CH2M Hill to be coated.909 The basis is that aggressive CO2 in the form of carbonic acid in a very aggressive and corrosive form is distributed along the pipeline.9 Laboratory tests of the groundwater along the pipelines which are the only groundwater tests offered into evidence, confirm this fact.910 If the groundwater condition was anything other than is what is shown in what appears to be a thorough and well done analysis then the Court assumes that the Defendants would have offered contrary laboratory tests. The weighing of the evidence requires giving great weight to objective groundwater tests done by disinterested qualified laboratory technicians.

The believably physical evidence that carbonation inside the mortar coating is taking place is in some of the pipe in the pipeline is persuasive.912 The Court has observed pictures of such carbonation in Interpace's petrographer's report, Exhibit D1-1370, photo #19, and the blowup version Exhibit 1558. The evidence offered on the pipe coating question by CH2M Hill913 is not believable based upon the weighing of the credibility of the witnesses and their engineering answers and expertise.914

Proper engineering procedure was not followed by CH2M Hill's engineer, Mr. Henderson, in determining the coating question. He looked at only soil borings from Price Brothers along selected portions of the line. Exhibit P-326. He incorrectly denies that water samples should also have been obtained.915 The Price Brothers' borings showed a pH in the soil of a lot of areas of 5.5 pH or less. In April of 1975, Mr. Henderson was specifically advised in writing by Interpace that any soil with a reading of 5.5 pH should receive two coats of black asphalt. See Exhibit 325.916 If you have a soil pH of around 4.5 or 5 you should coat the pipe.917 The Price Brothers report dictates that the pipe be coated if you do not have any other analysis.918

Therefore, Mr. Henderson's experience in evaluating the environment around the pipeline was simply inadequate. No water tests were done and the soil information at his disposal upon which he made the coating decision warranted coating the pipe. Mr. Henderson obviously ignored Interpace's engineering advice to coat the pipe received long before the Pinellas County pipe decision was made.919 Mr. Henderson also ignored soil information from borings from Florida Power and Harlan Laboratories acknowledged by him to have been received prior to the bid documents being sent out on the Pinellas County job.920 Total acidity is not the governing factor in determining whether to coat the pipe. 921

The Court finds that CH2M Hill breached its contract in failing to specify two coats of cold tar epoxy be placed on the Pinellas County pipe and, therefore, the County is entitled to damages for coating the new replacement pipe.

(2) CH2M HILL BEACEED ITS CONTRACT IN FAILING TO PROPERLY REVIEW INTERPACE 'S "SUBMITTAL SHEET" AND "EXPERIENCE LIST"

CH2M Hill was required to properly review and approve Interpace's submittal sheet and shop drawings, Exhibit P-5, under CH2M Hill's contract Section B(2) and Interpace's contract Section C-01.922 The submittals were received before Interpace started making the pipe.923 The submittal sheets were not properly reviewed by Mr. Henderson.924 Many errors in the submittals indicating the pipe was not going to be produced according to specifications and standards would have been apparent to an engineer skilled in reviewing submittals and shop drawings for prestress pipe.

(3) WRONGFUL APPROVAL OF CLASS WIRE

The Court has already made findings that "Interpace Class IV wire" was improperly developed, did not come within the standards of Section 2.8.1 of AWWA C301-72 or

ASTM A227-71 and was improperly manufactured.926 The Court has also held that even by approval of the engineer, Interpace was not relieved of liability for failing to manufacture the pipe according to specifications.927 The national standard and Pinellas County engineering contracts envisioed a service of checks and balances. There are provisions for engineers to check on the pipe manufacturer at each step of the manufacturing process.928 Review of the submittal sheets and shop drawings was the first check that Pinellas County engineers had on Interpace's intentions in manufacturing the pipe. CH2M Hill totally "dropped the ball" in this regard.

The submittal sheets show wire size to be governed by ASTM A227-71 and A648-73. Under "wire class" no standard is cited except the designation "IV" meaning Class IV wire. The County correctly claims that the reviewing engineer should have caught the fact that Class IV wire was not permitted under the specifications and standards.929 This task was one of the primary obligations of the engineer. The engineer should have looked at Section 2.8.1 of AWWA C301-72 and ASTM A227-71 and determined that Class IV wire was not permitted under the applicable standards.930 The same analysis made by the prior Court's findings in this regard931 should have been followed by CH2M Hill engineer Mr. Henderson's review. Mr. Henderson did not look up the standards at the time to determine if Class IV wire was permitted.932 He felt no obligation to investigate Class IV wire because of the submittal sheets absence of specifying a standard or reference to using Class IV wire.933 Mr. Henderson has no expertise in metallurgy934 and in fact there was no metallurgist on staff at CH2M Hill for him to have consulted.935

Mr. Henderson agrees that A648-73 is not in the specifications. He does not know why Interpace included the standard in the submittal sheet. He is not sure it concerned him at the time.936 He agrees Class IV wire is not permitted under A648-73.937 The specification ASTM A648-73 should

definitely have put Mr. Henderson on notice that something was wrong with the submittal sheet and the matter should have been thoroughly checked at that point.938

CH2M Hill breached its contract through the actions of Mr. Henderson. With a new class of wire and no standard cited for its use, he should not have ignored the stated intention of Interpace to use Class IV 8-gauge wire on all Pinellas County pipe. His review constituted no review at all of the most critical component part of a prestress pipe.939 CH2M Hill fell below the standard of care in approving Class IV wire without requiring the submission of tests, making inquiry of metallurgists, or reviewing prior tests Interpace performed as was their right under the Interpace contract.940 These findings constitute a major breach of the engineering contracts in permitting defective unsanctioned wire to be placed on the entire pipeline which now is so defective that the entire line must be replaced.

(4) FAILURE: TO CHECK INTERPACE "EXPERIENCE LIST"

The Interpace contract required Interpace to submit to the engineers an experience list of past similar jobs.941 The purpose of the list is to provide the enginer with a method of checking the past performance of the manufacturer.942 The standard of care at the time was to make inquiry otherwise there would be no reason for the request.943 The term used in the request of "similar design specifications" would include Class IV wire.944 The Detroit Water Board is on the list.9'5 The Detroit Water Board had rejected Class IV wire.946 Mr. Henderson of CH2M Hill did not check any jobs on the list.947 Had the list been checked to inquire about the use of Class IV wire, as it should have been, then CH2M Hill would have been put on notice that Class IV wire was at least suspect.948 CH2M Hill breached its contract in not checking the experience list for problems on similar jobs.949 Had such a check been made the problem with Class IV wire would have been uncovered. Again,

another check of the manufacturer was bypassed by CH2M Hill. CH2M Hill Engineer, Robert Ghiotto's, explanation that the experience list is simply to exclude bidders who are not qualified to make pipe is rejected.950

(5) FAILURE TO PROPERLY EXAMINE DESIGN FORMULAS AND EQUATIONS LEADING TO PRODUCTION OF DEFECTIVE AND UNDER PRESSURE RATED PIPE

The submittal sheets and shop drawings specified the initial and resultant modular ratio and creep factor together with the formulas for making each individual pipe.951 Review and approval of these submittals was again one of the primary responsibilities of the engineer.952

The substance of Mr. Henderson's testimony on this point is that he didn't either do or recheck any of the calculctions.953 The Court is satisfied from the overall tenure and testimony of Mr. Henderson that he did not check the calculations or the important modular ratio figures which vitally bear on the question of whether the pipe would be made at the working and transient pressures specified. Florida limestone (lime rock) is well known to be soft and porous.954 Mr. Henderson knew or should have known of these qualities and that the new plant at Lacoochee was using soft Florida aggregate.955 Mr. Henderson claims that a consulting engineer did not have to check the design calculations.956 The Court finds to the contrary. After listening to the testimony it is not clear what Mr. Henderson did check to protect Pinellas County from the problems visited on the County as the result of the defective manufacture of the pipeline. Mr. Henderson does not appear to be qualified to review a submittal sheet or the equations.957 Neither is Mr. Suddath who was the project manager and was supposed to review Mr. Henderson's work.958 These design formulas were found by CTL to be inadequate to produce pipe with soft Florida aggregate.959 Again, there was no check and balance. Because of CH2M Hill's breach of contract in failing to properly review the sub-

mittal sheet and shop drawings and calculations, and by CH2M Hill providing untrained personnel to review such submittals, Pinellas County now has a pipeline which does not have the pressure ratings specified and is made from sub-standard aggregate. Appendix A of AWWA C301-72 provides that "supporting data shall be provided if requested by the engineer". CH2M Hill could have and should have required supporting test data that the pipe were designed according to Appendix A and the cubic parabola. The information received would have been the same test information as developed bay CTL in testing Pinellas County pipe.960 It must be assumed that such tests would have shown the pipe defectiveness since all CTL tests failed the pressure-strain PO test.961 Here is yet another check and balance overlooked by the engineers if CH2M Hill was truly intending to comply with its contractual duty to protect the County.

(6) CH2M HILL BREACHED ITS CONTACT BY APPROVING USE OF 17—GAUGE STEEL INSTEAD OF .16— GAUGE STEEL

The submittal sheets calls for 17-gauge steel while 16-gauge steel should have been used.962 CH2M Hill should have reviewed the national standard and compared it to the submittal sheet and caught the error.963 The submittal should have been rejected.964 The breach of contract ordinarily would seem minor except for the finding of this Court already made965 that the number of prestressing wire wraps are dependent on the steel cylinder thickness used in design calculations.966 Interpace compounded this breach by, utilizing 16-gauge cylinders in manufacturing many of the pipes with the result that these pipes have an insufficient number of wire wraps per foot to compensate for the thicker 16-gauge cylinder. Thus, the pipes were designed assuming thinner cylinder steel than permitted by the specifications and, in addition, in pipes which were actually made using 16-gauge steel cylinders, were underwrapped or under reinfoced with pressure wire.967 The testimony of the engineering expert called by CH2M Hill on this question is rejected as cold rolled

steel instead of hot rolled steel was used.968

F. BREACH OF CONTRACT BY CH2M HILL FOR NOT INSPECTING THE MANUFACTURING PLANT AN AVERAGE OF FOUR (4) TIMES PER MONTH AND NOT ANALYZING, REVIEWING, APPROVING OR REQUIRING TO BE SUBMITTED TESTS OF INTERPACE COMPONENT PARTS

The Court has held that one of the contractual duties of CH2M Hill was to protect the County by monitoring the Lacoochee manufacturing plant and obtaining and reviewing the manufacturing tests.969 There remains for determination whether or not the engineer breached these duties.

(1) CH2M HILL BREACHED ITS CONTRACTUAL DUTY TO INSPECT THE PIPE MANUFACTURING PLANT

Pinellas County experts contend that the provision contained in paragraph B(1) of the CH2M Hill contract required the engineer to inspect the Lacoochee plant to make sure that Interpace was properly manufacturing the pipe according to specifications.970 CH2M Hill contends that the "construction site" meant the laying site. 971 While the Court has already made its ruling on this point, it is noted that if CH2M Hill's contention was correct it would be duplicative and redundant of the County's hiring of inspectors to inspect the laying of the pipe by the contractor Bumby & Stimpson. 972

The weight of the evidence shows that Pinellas County did not have the expertise to inspect the pipe at the laying site and hired an individual named Jim Fason to handle residential inspections.973 Mr. Fason was called by CH2M Hill and testified that his responsibilities in inspecting the pipe on behalf of Pinellas County were not to see to it that the pipe was made according to specifications974 but only to

determine any deficiencies that could be observed from the outside of the pipe such as mortar coating cracks, holes that needed patching, bell and spigot flange problems, etc.975 He became quite irate when on cross examination it was suggested you could tell from the outside of the pipe that the pipe had been manufactured according to specifications.976 He stated that only by viewing the manufacturing process could you tell if specifications had been met 977

The Court has heard from one of the inspectors who was at the laying site for the entire period of time the pipe was being installed978 and Mr. Fason979 ar[illegible] is satisfied that the greater weight of the evidence is that there were no superficial or other defects not properly addressed when the pipe was installed. Pinellas County is found to have had no notice that internally the pipe was grossly defective.

Factually, CH2M Hill cannot certify final acceptance, protect the County from defects, and judge the performance of Interpace in complying with Interpace's contract obligations without observing the pipe's manufacture at the Lacoochee plant.980 CH2M Hill admitted through the head of the Clearwat r office that at no time did CH2M Hill ever send anyone to Lacoochee to inspect the materials used or judge Interpace's performance under its contract or specifications-981 Interpace's chief engineer stated that it was not unusual for inspectors to be in plants in the 1970's.982

This controversy centered around the admitted fact that the project manager visited Lacoochee at least 3 to 4 times during the manufacture of Pinellas County's pipe.983 The County contended that if CH2M Hill was really correct in its position that it was to visit the laying site on an average of four (4) times per month, Mr. Suddath didn't do that either.984 The Court is faced with the requirement of determining who is telling the truth.

Mr. Suddath was pressed hard in his video deposition985 produced by Pinellas County and his live testimony

on cross examination986 about the purpose of his visits to Lacoochee if contractually CH2M Hill had no obligation to visit the plant. His answer to why he visited Lacoochee was that he was "curious".987 When asked what he had learned after the first visit his and was in essence "nothing".988 He admitted to having no expertise to determine whether the pipe was being manufactured properly.989 The evidence was that no one on CH2M Hill's staff had such expertise.990 Under such testimony it is obvious that whether at the laying site or at the plant, Mr. Suddath was not qualified to meet CH2M Hill's contractual duties to protect Pinellas County from defects and deficiencies in the work of Interpace. The testimony is therefore weighed and construed by the Court as tantamount to an admission that CH2M Hill did not comply with its inspection requirements agreed to in Section B(1) and B(4) of the CH2M Hill contract. The Court finds that Mr. Suddath was at the pipe plant going through the inspection motions without having the capacity for determining whether faulty manufacturing procedures were in progress. His testimony is unbelievable that he was there only out of "curiosity".

Pinellas County produced a Pinellas County inspector who testified that he did not see Mr. Suddath at the laying site of the actual pipeline through the period of one year and three months the pipe was being layed.992 Mr. Suddath would usually go to the County trailer kept some distance from the actual laying site.993 Mr. Suddath usually wore a suit or clothes not suitable for construction inspection.994 You need a four-wheel drive vehicle to go through the rugged terrain to the laying site.995 Mr. Suddath did not make such trips.996 Mr. Suddath would usually check at the trailer and then leave.997

CH2M Hill produced a witness not even on the witness list named Johnnie Jones who was the foreman for Bumby & Stimpson who was on the job throughout the laying of the pipeline. He was asked on direct examination if CH2M Hill engineers were at the laying site to which he

replied "several times".998 On cross examination he was asked what he meant by "many times" to which he replied "three".999 He then went on to say that CH2M Hill engineers were definitely not at the laying site an average of four (4) times per month. The engineers are bound by their own testimony which they have produced.

Based upon the demeanor of the witnesses and the greater weight of the evidence, the Court finds that the engineers were not monitoring the manufacturing plant as they should have been and were not at either the plant or the laying site an average of four (4) times per month in direct violation of the engineers' contract. CH2M Hill breached its obligation to inspect the pipe and protect the County from defects and deficiencies in the work of Interpace.

All sorts of obvious improper manufacturing techniques were going on at Lacoochee as previously found by the Court.1001 There was no quality control.1002 A majority of the defects found in the excavated pipe could have been detected by a properly trained engineer if CH2M Hill had sent one to the plant.1003

The majority of defects found upon strippinq could only have been found at the time the pipe was made.1004 In the eyes of the Court CH2M Hill is just as respsonsible as Interpace for a qrossly defective pipeline being placed into service.

(2) CH2M HILL BREACHED ITS CONTRACT BY NOT ADVISING PINELLAS COUNTY TO HAVE FULL-TIME OR PART-TIME INSPECTORS AT THE PIPE MANUFACTURING PLANT

Pinellas County has also sued CH2M Hill for failure to advise Pinellas County to provide full-time inspectors at Interpace's Lacoochee plant under Section A(1) of the Hills CH2M Hill's contract. CH2M Hill never advised that inspectors should be used.1005 Full-time inspectors would obvi-

ously have been able to catch substantially all of the numerous quality control and improper manufacturing procedures which took place when the pipeline was made.1006

With this charge CH2M Hill is caught in a dilemma. If the engineers duty was to visit the Lacoochee plant an average of four (4) times per month, a qualified engineer would have found the improper manufacturing procedures as found by this Court in these findings. If inspection was not a duty assumed under the contract then certainly Pinellas County should have been advised that full-time or part-time inspectors should be assigned to the manufacturing plant; Pinellas County has produced qualified engineering opinion to this effect and that in failing to give such advice CH2M Hill fell below the standard of care.1008 The Court concurs. CH2M Hill held itself out as the experts in such matters and were paid for their advice. Lacoochee-was known to the engineers to be a new plant.1009 The importance of this pipeline was also known to the engineers.1010 It was common to have inspectors at the plants in the 1970's.1011 In fact, a specific provision in the national standard required the manufacturer to be permit such inspections. See Section 1.7.1 of AWWA C301-72. The right of plant inspection was written into Interpace's contract by CH2M Hill. See paragraph 6, page C-3 of Interpace contract.

Based upon the greater weight of the evidence, the Court finds that CH2M Hill breached its contract with the County in failing to advise Pinellas County to have full and/or part time inspectors at the Lacoochee plant.

(3) CH2M HILL BREACHED ITS CONTRACT BY NOT REVIEWING MANUFACTURING TESTS OR REQUIRING THAT THE SPECIFIED TESTS BE SUBMITTED FOR REVIEW

The engineer specified that the manufacturer give the engineer certain tests under Section 1.9 of AWWA C301-72 before construction.1012 Again, this was a check on the com-

ponent parts provided as an option under the national standard. CH2M Hill never reviewed the tests nor did it insist on their production before the engineers permitted full scale production to commence.1013 Throughout the project the engineer knowing they had not reviewed the specified tests and knowing there was no expert monitoring of the manufacture of the pipe approved periodic payments to Interpace.1014 The engineer bypassed the last check and balance it had built into the specifications by certifying the job complete to Pinellas County and that the pipe had been made according to the plans and specifications1015 without first obtaining Interpace's affidavit that the pipe had been made according to its contract and specifications.1016 The Court does not understand how CH2M Hill could require the submittal of an affidavit and then certify the job complete according to the specifications knowing that the affidavit by the manufacturer certifying compliance with the specifications had not been submitted.

One of the options which could have been specified and written into the specifications was for Interpace to supply the fine and coarse aggregates from the Lacoochee plant under Section 2.4 of AWWA C301-72. Knowing that the plant was new, that Florida limestone was being used and was soft, CH2M Hill violated its contract to provide proper specifications by not specifying that Interpace comply with Section 2.4 of AWWA C301-72.

The Lacoochee aggregate had never met AWWA specifications since the plant opened.1017 This deficiency would have been found and a major portion of the defects stopped had the engineer taken advantage of this check and balance.1018 However, the Court has no reason to believe that, had the tests been specified, the conduct of the engineer in reviewing the results would have been any less deficient. But the allegation has been made and the Court must find that CH2M Hill breached its contract for failure to specify Section 2.4 tests under AWWA C301-72.

(4) CH2M HILL'S BELIEF THAT THE PIPELINE COULD NOT BE OPERATED AT THE SPECIFIED WORKING PRESSURE OF 150 PSI AND THAT THE LINE WOULD ONLY LAST 50 YEARS

Under CH2M Hill's contract the engineer was to provide a complete basis for design which includes specifying the proper operating and surge pressures in the line. See paragraph A(2) of the CH2M Hill contract. Mr. Henderson, when designing the pipeline, specified 150 psi operating pressure and 210 psi working plus surge (transcient) pressure. However, he testified that he only assumed that the line would operate at a minimum pressure of 40 psi and a maximum pressure of 100 psi.1019 He stated he only planned 10 years in advance when he designed the line consistent with a 10 Year Master Plan previously done for the County by CH2M Hill.1020 Mr. Henderson was emphatic that under no circumstance would he advise operating the line at greater pressures than 100 psi 1021 Mr. Suddath agreed with this conclusion.l° Mr. Henderson reasoned that he built in a safety margin on his own of 50 psi which, in effect, from his standpoint meant that Pinellas County could never safely operate at over 100 psi operating pressure.1023 In contradictory fashion, Mr. Henderson acknowledges that the specifications require the manufacturer to manufacture a pipe to withstand a design operating pressure of 150 psil024 and that working pressure under AWWA C301-72 means the maximum operating pressure at which the pipe is actually going to be operated.1025 He insists that he bound the manufacturer to produce a pipe of 150 psi working pressure.1026

Pinellas County has sued CH2M–Hill for breach of contract and negligence contending that CH2M Hill did not advise the County that the line could only be safely operated at 100 psi and that, therefore, CH2M Hill under designed the pipeline so that the line would not operate at the needed higher pressures as the County grew. Of course, if the working pressure wasn't designed correctly then the transient pressure wouldn't be adequate either. Mr. Henderson does

not remember ever advising the County of the 100 psi limitation.1027 Mr. Henderson does not remember ever advising the County of the 100 psi limitation.1027

Pick Talley., the Water Director at the time the pipeline was designed, said that at no time was he advised that the line can only be operated at a maximum of 100 psi working pressure in the future.1028 He understood the lines operating pressure would be 150 psi for needed growth and expansion in the future and he would not have agreed to such limitations.1029

In essence, the County claims that somehow CH2M Hill knew that in fact the County was not going to get a pressure rated pipe of 150 psi working pressure - 210 surge - as in fact the greater weight of the evidence shows from the CTL tests.1030

The County has produced expert testimony which is believed by the Court that if CH2M Hill was of the opinion that the pipe was undependable at pressures of 150 psi and could only be used at 100 psi, CH2M Hill breached its contract and fell below the acceptable engineering standards of care for pipeline design engineers.1031 Under these circumstances the water system demand would not be met.1032 In sum, CH2M Hill did not build sufficient flexibility into the pipeline under their secret design assumptions.1033 Mr. Henderson was impeached on the point with a letter written-by him in which pipeline meters were to be set at 150 psi and the statement made that occasionally pressures at between 120 and 140 psi could be expected.1034

Again, based upon judging the credibility of the witnesses CH2M Hill owed a duty to Pinellas County to Advise the County that pipe of 150 psi working pressure and 210 psi working plus surge (transient) pressure was specified, the County could only depend upon a maximum 100 psi working pressure and less than 210 working plus surge (transient) pressure. The County would have then had the option of

increasing working pressure and surge pressure specifications. The knowledge that CH2M Hill now states it had when the pipe was designed should have been used for the benefit of the County. Such knowledge would have required the engineer to check on the manufacturer to make sure that 1/3 of the working pressure was not being cut out of the pipe. Instead, the testimony is that CH2M Hill did nothing and by failing to take appropriate engineering action and advising its clients of the true facts, the engineer breached its contractual obligations to the County. Under Section A(1) as well as A(2) of the CH2M Hill contract, such advice and consultation was mandatory.

An additional charge by the County against CH2M Hill in the same vein is the claim that CH2M Hill believed the pipeline would only last 20 to 50 years when it designed the line and didn't advise the County of this fact, Mr. Henderson confirms that he expected the line to last 20 to 50 years.1035 He did not tell Pinellas County of his opinion.1036 The Water Director at the time recalled discussions with Henderson and Suddath and the Interpace salesman that the pipe had no finite life and could last 100 years or longer.1037 The prestressed concrete pipe people told him that concrete would get harder over time so there was no limit of the expected life of concrete pipe.1038 It could go on as long as 100 years, 200 years, or beyond "it may go on forever".1039 The Interpace salesman said that there was no known limit of the pipe's life and the pipe was expected to go on indefinitely.1040 The Court believes this testimony.

The then Water Director in conversation with Henderson was not told that the pipeline would last 50 years.1041 The Director would have gotten another type of pipe had he been so advised.1042 The Court also believes this testimony. It is consistent with the salesman's testimony1043 and Interpace's advertising.

The Court must find that CH2M Hill's admissions constitute admissions that it breached its contract with

Pinellas County.1045 It is not practical to put in such a strategic line and have it last only for 50 years.

G — IMPROPER DESIGN AND PLACEMENT OF VACCUUM RELIEF VALVES

CH2M Hill was to prepare proper basis for design of the pipeline under Section A(2);(3) of the CH2M Hill contract. Vacuum relief valves were designed to be spaced along the pipeline to prevent damage to the line by surge.1046 A vacuum relief valve has an air inlet with a float valve connected to the top of the pipe in the pipeline so that if a negative pressure (surge) wave comes by the valve, air will be released into the line disbursing the vacuum cavity behind the surge wave.1047 CH2M Hill designed the valves to be installed in vaults at ground level and some below ground level 1048 Inspection of the below ground level valves revealed that they were filled with water and 5 of 8 valves were under water.1049 The bottom of the vault contained only gravel, and groundwater came up through the bottom as well.1050 The valves had to be raised.1051 Pinellas County has sued CH2M Hill for the cost of raising the valves above water level and correcting the problem.

The Court has seen a picture of one of the valves (vaults) (Exhibit 1141). It was filled with putrid groundwater. If the valves were constructed as specified by CH2M Hill when a surge came by the valve, the valve would open and pour contaminated water into the public water supply line.1052 This would contaminate the water supply in the pipe. Also, since water would first be dumped into the line instead of air the surge would not be dissipated and the valve would not prevent the surge and potential damage to the pipe.1053 Therefore, CH2M Hill breached its contract with Pinellas County and fell below the standard of care in improperly designing and placing the vacuum relief valves.1054 Pinellas County is entitled to recover damages against CH2M Hill for repair and raising of the valves.